

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

HOLLAND CONSTRUCTION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2007-127
)	
FREDERICK KOPKO, JR., and)	
MARY ELIZABETH KOPKO,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

James M. Derr, Esq.
St. Thomas, U.S.V.I.
For the plaintiff.

Alan D. Smith, Esq.
St. Thomas, U.S.V.I.
For the defendants.

ORDER

GÓMEZ, C.J.

Before the Court is the motion to dismiss of the defendants, Frederick Kopko, Jr. and Mary Elizabeth Kopko (the "Kopkos").

I. FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff in this matter, Holland Construction, Inc. ("Holland"), is a corporation organized under the laws of the U.S. Virgin Islands and with its principal place of business on St. Thomas, U.S. Virgin Islands. According to the Complaint, the Kopkos are citizens of the State of Illinois. Holland alleges that it contracted with the Kopkos to complete a partially-

constructed house on certain real property the Kopkos own on St. Thomas. Holland further alleges that it substantially completed the house, and that the Kopkos thereafter unilaterally terminated the contract. Consequently, Holland initiated this two-count action for (1) amounts due under the contract and (2) foreclosure of a construction lien.

The Kopkos now move to dismiss this matter¹ pursuant to title 13, section 533(a) of the Virgin Islands Code ("section 533(a)").²

¹ The Kopkos also moved to dismiss this matter pursuant to Federal Rule of Civil Procedure 12(b)(1). That motion was denied. The Kopkos thereafter sought reconsideration of the Court's denial of their motion to dismiss. That motion was also denied.

² Section 533(a) provides:

No corporation may commence or maintain any action in any court if it has not paid its annual franchise tax last due. A certificate of the payment of such annual franchise tax, or any duplicate of such certificate under the seal of the Lieutenant Governor, shall be prima facie evidence of such payment. The Lieutenant Governor shall issue such certificate upon request. Notwithstanding the foregoing provisions, before a pending case may be dismissed, a corporation shall be given a reasonable time to provide proof that arrangements have been made to pay any delinquent franchise taxes once the matter is brought to the court's attention, as it is the purpose of this statute to collect the franchise tax and not simply to dismiss a case. If the proper proof is presented to the court that such arrangements to pay any delinquent franchise taxes have been made with the Lieutenant Governor's Office, a pending case shall be allowed to proceed without being dismissed.

II. ANALYSIS

A corporation that fails to pay its franchise taxes cannot commence or maintain any action in court. V.I. CODE ANN. tit. 13, § 533(a); see also *Polychrome Int'l Corp. v. Krigger*, 5 F.3d 1522, 1531 (3d Cir. 1993). "However, in almost all actions commenced or maintained by a corporation which has not paid its annual franchise tax last due, the corporation should be allowed a reasonable time within which to become reinstated as a corporation in good standing before dismissal under § 533(a) will be ordered." *Maison La Crepe v. Hilbress Assocs.*, Civ. No. 1032-1982, 1983 V.I. LEXIS 30, at *3 (Terr. Ct. Dec. 14, 1983); see also *Keith Enterprises v. Centurion Corp.*, Civ. No. 185-1971, 1973 U.S. Dist. LEXIS 5206, at *2-3 (D.V.I. Sept. 27, 1973) (holding that a corporation should be given an opportunity to pay its overdue taxes, reinstate itself as a corporation in good standing and proceed with the action).

The Kopkos assert that Holland "lacked standing to commence this action, and lacks standing to maintain this action," because it has not paid its franchise tax last due, in violation of section 533(a). (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss 1). In support of that assertion, the Kopkos have attached to their motion the affidavit of the assistant director of the

Division of Corporations and Trademarks of the Office of the Lieutenant Governor. That affidavit states, *inter alia*, that Holland "failed to file and pay its franchise taxes for years-2004, 2005, 2006, 2007" and that Holland "is not in good standing with the applicable sections of the Virgin Islands Code."

(Roebuck, Jr. Aff. ¶¶ 3, 6, Dec. 3, 2007.) The Kopkos therefore request that Holland comply with section 533(a) within a reasonable time, failing which this matter should be dismissed.

Holland asserts that it "has paid its franchise taxes for all the years in question and is presently in good standing." (Pl.'s Opp'n to Supplement to Mot. to Dismiss 2.) In support of that assertion, Holland has submitted receipts for payment of franchise taxes plus late charges. Holland further asserts that "a Certificate of Good Standing is being prepared and will be given to Holland . . . shortly." (*Id.*)

For the reasons stated above, it is hereby

ORDERED that Holland is granted leave to file with the Court, no later than 30 days from the date of this Order, appropriate documentation to show that it is a corporation in good standing, as contemplated by section 533(a); and it is further

ORDERED that Holland's failure to file such documentation within 30 days of this Order shall result in the dismissal of

Holland v. Kopko, et al.
Civil No. 2007-127
Order
Page 5

this matter.

Dated: December 10, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

copy: Hon. Geoffrey W. Barnard
 James M. Derr, Esq.
 Alan D. Smith, Esq.
 Carol C. Jackson
 Lydia Trotman
 Claudette Donovan
 Olga Schneider
 Gregory F. Laufer